

20-6538

Civil Action No. \_\_\_\_\_

In the  
Supreme Court of the United States

Gabriel Schmitt, on behalf of himself, resident of  
the COMMONWEALTH OF MASSACHUSETTS

Plaintiffs,

v.

Governor Charlie Baker, in his official capacity as  
Governor of the COMMONWEALTH of MASSACHUSETTS

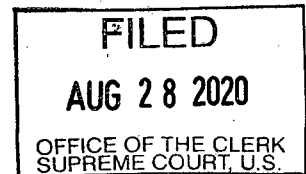
Defendant.

ORIGINAL

ON PETITION FOR A  
WRIT OF CERTIORARI TO  
FIRST CIRCUIT COURT  
OF APPEALS

PETITION FOR Writ of Certiorari in case 20-1428 Schmitt vs. Baker (1<sup>st</sup> circuit)

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### Questions Presented:

1. May a state governor close the state house of that state's congressional body to the public, in addition to all of his offices, such that there is no way for any individual to serve him with a summons to a civil action which alleges that such behavior (in addition to any other restrictions on said individual's constitutional rights) is a violation of first amendment rights (including the right to be able to petition for redress of grievances)? If a governor may do such a thing with the stated intention of protecting the public health, may the aforementioned individual be granted the right to serve the governor with substitute service (in stead of R. Civ. P. 4) as defined by *Transamerica Corp v. Transamerica Multiservices Inc.* et al. No. 118 CV 22483 due to the fact that as a defendant he is preventing a summons from being served on himself by his actions?

2. May a state governor violate the constitutional rights of his state's citizens using the police power and fines by relying on data from the Center for Disease Control and the World Health Organization, both of whom are biased in favor of large pharmaceutical companies, donors and other funding sources? If a governor may do so, is it allowable that he should be able to rely on data regarding the spread of an accute respiratory illness which is collected in a non-standardized and innacurate way, through the use of PCR tests, Serology tests, and doctor's assesments, none of which are verifiably accurate or have been proven consistent amongst each other previously for the purpose of proving that such a disease is rapidly spreading and hence a threat to the public health? If a governor may do both of the aforementioned actions, is it allowable that he should be able to limit the free practice of religion based on said information despite the fact that courts have previously ruled in *Yoder v. Wisconsin* that only a state interest of the highest order can be grounds for obstructing the first ammendment right to practice religion?

### **List of Parties**

All parties appear in the caption of the case on the cover page.

### **Related Cases**

- Schmitt v. Baker, No. 1:20 - CV – 10618-NMG, U.S. District Court for the Eastern District of Massachusetts. Judgment entered March 31, 2020.
- Schmitt v. Baker, No. 1:20 - 1428, U.S. First Circuit Court of Appeals. Judgment entered August 28, 2020.

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**In the Supreme Court of the United States**

**Petition for Write of Certiorari**

Plaintiff, Gabriel Schmitt, respectfully prays that a writ of certiorari issue to review the judgments below.

The opinion of the United States court of appeals, first circuit, appears at Appendix A to the petition and is available at [pacer.gov](http://pacer.gov) and is unpublished in any other form.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

## **Jurisdiction**

The date on which the United States Court of Appeals, first circuit, decided my case was August 28, 2020.

The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

## **Constitutional and Statutory Provisions Involved:**

### **Chapter 639 Civil Defense Act of 1950**

Sections 4, 5 , 7 (See Appendix C)

Section 8 in pertinent part: Executive Orders, General Regulations, and Written Instructions of Governor; Violations; Penalties.

“The governor may exercise any power, authority or discretion conferred on him by any provision of this act, either under actual proclamation of a state of emergency as provided in section five or in reasonable anticipation thereof and preparation therefor by the issuance or promulgation of executive orders or general regulations, or by instructions to such person or such department or agency of the commonwealth, including the Massachusetts Emergency Management Agency, or of any political subdivision thereof, as he may direct by a writing signed by the governor and filed in the office of the state secretary. Any department, agency or person so directed shall act in conformity with any regulations prescribed by the governor for its or his conduct.”

### **General Laws of Massachusetts**

General Laws Chapter 111 Section 6

General Laws Chapter 17 Section 2 A:

“Upon declaration by the governor that an emergency exists which is detrimental to the public health, the commissioner may, with the approval of the governor and the public health council, during such period of emergency, take such action and incur such liabilities as he may deem necessary to assure the maintenance of public health and the prevention of disease.”

### **First Amendment to the constitution of the United States:**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Rule of Civil Procedure 4(c)1:(1)** In General. A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.



## Statement of the Case

1. This petition is intended to communicate why the decisions of the first circuit court of appeals and the district court of eastern massachusetts on Plaintiff's emergency motion are worth reviewing by the Supreme Court. A brief summary of the case is as follows:

2. Due to a new strain of a Coronavirus, termed COVID-19, Governor Charles D. Baker, the defendant, decided to invoke his emergency powers by declaring a state of emergency under General Laws Chapter 17 Section 2A due to a public health risk. At the time of the Plaintiff's filing there had been 13 COVID-19 executive orders which curtailed the rights of residents of the Commonwealth of Masachusetts in an effort to curb the spread of COVID-19. Due to the Governor's failure to uphold the constitutional rights of the Plaintiff, Plaintiff filed a civil action seeking relief from the court and protection of his first amendment rights. Courts have stated in *United States v. O'brien* that the state must limit itself to the bare essential required to further the state interest, which Governor Baker has failed to do by employing measures which are overbearing and unproven. They have further held in *Yoder v. Wisconsin* that only the highest state interest can be cited as cause to restrict the free expression of religion, which Governor Baker never established in his executive orders, nor did he meet the standard of establishing that a clear and present danger existed from *Thomas v. Collins, Sheriff* (323 U.S. 516.

3. As the Plaintiff was unable to serve Governor Baker with the complaint, he sought to contract with the Sheriff for service of the summons, but was refused and being unaware of rule 4(c)3, he filed an emergency motion which sought a restraining order against the governor and/or the ability of the Plaintiff to employ substitute service, as defined in *Transamerica Corp v. Transamerica Multiservices Inc.* et al. No. 118 CV 22483 in sted of R. Civ. P. 4. on defendant Charlie Baker (because Mr. Baker had closed all offices and the state house to the public, making service of a summons impossible, even by

the Sherrif, whom the Plaintiff attempted to contract with for the purposes of delivering the summons.) The restraining order was intended to stop what was at the time 13 COVID executive orders which employed the police power of the state in an unconstitutional way by constraining the use of first amendment rights of the Plaintiff without meeting the requirements set by the Courts. These executive orders are intended to stop the spread of COVID-19, as he wrote.

4. Although employing the police power to constrain constitutional rights, the measures employed by Mr. Baker were not demonstrated to be effective or limited to the bare essential measures needed to stop COVID-19. Nor was there clear evidence of a clear and present danger presented by the Governor as cause for his measures, which include limiting the exercise of religion. Further issues with his executive orders include:

- A. Obstructing the ability to petition the government for redress of grievances (hence why Plaintiff could not serve the summons), by closing the state house

- B. Obstructing the right to personal autonomy that has been repeatedly upheld by the court by enforcing social distancing measures, wearing of masks, and ordering consenting adults to refrain from physical contact.

- C. Obstructing the right to peacefully assemble by limiting indoor and outdoor gatherings to 10 or 25 individuals, respectively.

- D. Depending on data from PCR tests, examinations, serology tests, and the CDC and WHO which are not credible evidence and have been shown to be inaccurate to such an extent that they cannot be used to justify the curtailment of constitutional rights.

5. Justice Nathaniel Gorton of the eastern district ruled (civil action No. 20-10618-NMG) that, "...plaintiff has not demonstrated that he will suffer irreparable injury, loss or damage resulting from his temporary inability to serve process on defendant, Governor Charlie Baker." which precluded Plaintiff

from being allowed substitute service.

6. To summarize Gorton's opinion:

A. Plaintiff is denied substitute service on Defendant because he cannot demonstrate damages

B. Until he serves Defendant, Plaintiff's motion for injunctive relief cannot be heard, even though the Defendant's actions made it impossible for Plaintiff to serve complaint to begin with by closing his offices and the State House.

7. The first circuit court of appeals then denied to take up the case because of the nature of the temporary restraining order was not in effect an injunction (deciding that it lacked finality).

## Reasons for Granting the Petition

Justice Gorton's ruling is problematic because it implies someone without an income who cannot serve a complaint in accordance with R. Civ. P. 4 has no recourse against governors and politicians who obstruct their rights. Gorton continued on to say that Plaintiff's motion for a temporary restraining order is denied until the complaint could be served on the Governor, which is problematic because then no possible way exists for a hearing to be had on the constitutionality of such executive orders, unless the court appoints someone to serve the complaint according to Rule of Civil Procedure 4(c)(3), however he did not mention that this was a potential method of service in his opinion, instead referencing Massachusetts rule of civil procedure 4(d)(3).

In regards to the decision of the first circuit court of appeals, Plaintiff's motion clearly would have resulted in the same ends as an injunction and was only filed as a temporary restraining order for the sake of expediency, despite the ruling that it lacked finality. A temporary restraining order was thought preferable to an injunction because it would have meant that less time would have elapsed between the filing of the motion and a hearing. Either an injunction or a restraining order would do the same thing: stopping unconstitutional uses of the police power by Governor Charles Baker in response to COVID-19. They did not address the need for substitute service in their decision.

## Conclusion

It is the hope of the Plaintiff that the Supreme Court will grant this writ of certiorari for a Temporary Restraining Order and/or the Plaintiff to perform substitute service on Governor Baker in accordance with *Transamerica Corp v. Transamerica Multiservices Inc.* et al. No. 118 CV 22483.

Sincerely,

 Gabriel Schmitt  
9/29/20

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